

**Kimmins, Matthew
L.C., a minor v. State of California**

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

L.C., a minor by and through her)
guardian ad litem Maria Cadena,)
individually and as)
successor-in-interest to Hector)
Puga; I.H., a minor by and through)
his guardian ad litem Jasmine)
Hernandez, individually and as)
successor-in-interest to Hector)
Puga; A.L., a minor by and through)
her guardian ad litem Lydia Lopez,)
individually and as)
successor-in-interest to Hector)
Puga; and ANTONIA SALAD UBALDO,)
individually,)
Plaintiffs,)
vs.) Case No. 5:22-cv-
STATE OF CALIFORNIA; COUNTY OF SAN)
BERNARDINO; S.S.C., a nominal)
defendant; ISAIAH KEE; MICHAEL)
BLACKWOOD; BERNARDO RUBALCABA;)
ROBERT VACCARI; JAKE ADAMS; and)
DOES 6-10, inclusive,)
Defendants.)
REMOTE VIDEOTAPED DEPOSITION OF MATTHEW KIMMINS
MARCH 4, 2025

REPORTED BY: RACHAEL RAMIREZ
Certified Shorthand Reporter
License No. 13098

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REMOTE VIDEOTAPED DEPOSITION OF MATTHEW KIMMINS,
taken remotely via Zoom, on Tuesday,
March 4, 2025, at 2:01 p.m., before Rachael Ramirez,
Certified Shorthand Reporter, in and for the State
of California.

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1 APPEARANCES
2

3 FOR THE PLAINTIFFS:

4 LAW OFFICES OF DALE K. GALIPO
By: Renee Masongsong, Esq.
5 21800 Burbank Boulevard, Suite 310
Woodland Hills, California 91367
6 (818) 347-3333
hlee@galipolaw.com

7 FOR THE DEFENDANTS COUNTY OF SAN BERNARDINO,
8 ROBERT VACCARI AND JAKE ADAMS:

9 LYNBERG & WATKINS
10 By: Amy R. Margolies, Esq.
11 1100 W. Town & Country Road, Suite 1450
Orange, California 92868
(714) 937-1010
12 amargolies@lynberg.com

13 FOR THE DEFENDANTS STATE OF CALIFORNIA BY AND
14 THROUGH CALIFORNIA HIGHWAY PATROL AND MICHAEL
15 BLACKWOOD:

16 OFFICE OF THE ATTORNEY GENERAL
By: Diana Esquivel, Esq.
17 1300 I Street, Suite 125
Sacramento, California 95814
18 (916) 210-7320
diana.esquivel@doj.ca.gov

19 ALSO PRESENT: Gigi Fadich, Videographer
20
21
22
23
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<p>1 TUESDAY, MARCH 4, 2025, 2:01 P.M. 2 3 THE VIDEOGRAPHER: Good afternoon. This is 4 the remote deposition of Matthew Kimmins taken on 02:01:49 5 Tuesday, March 4, 2025, in the matter of L.C., et 6 al. versus State of California, et al., Case 7 Number 5:22-cv-00949-KK-(SHKx). This case is being 8 heard in the United States District Court, Central 9 District of California. 02:02:13 10 This deposition is on behalf of the 11 defendant. My name is Gigi Fadich, legal 12 videographer, contracted through Dean Jones Legal 13 Videos, Incorporated, of Los Angeles and Santa Ana, 14 California. Because we are not in person, I will 02:02:24 15 have to interrupt proceedings if deponent drifts out 16 of frame or there should be any connectivity issues. 17 This deposition is commencing at 2:02 p.m. 18 Pacific time. All present please identify 19 themselves beginning with the deponent. You are 02:02:42 20 muted. 21 THE WITNESS: Sorry about that. My name is 22 Matthew Kimmins, and I am the creative director for 23 Trial Template. 24 MS. MARGOLIES: Amy Margolies on behalf of 02:02:53 25 County defendants.</p>	<p>02:02:56 1 MS. ESQUIVEL: Diana Esquivel on behalf of 2 the State defendants. 3 MS. MASONGSONG: Renee Masongsong on behalf 4 of the plaintiffs. 02:03:01 5 THE VIDEOGRAPHER: Would the court reporter 6 please introduce herself and administer the oath. 7 THE REPORTER: My name is Rachael Ramirez. 8 I am a California Certified Shorthand Reporter. My 9 license number is 13098. 02:03:07 10 MATTHEW KIMMINS, 11 having been first duly sworn, was examined 12 and testified as follows: 13 14 EXAMINATION 15 BY MS. MARGOLIES: 16 Q Good afternoon, Mr. Kimmins. My name is 17 Amy Margolies, and I represent the County 18 defendants, and I'll be asking you some questions 19 today. 20 A Certainly. 21 Q I do apologize for the quality of my voice 22 and quite possibly the quality of my questions as we 23 move forward today. If you have any trouble hearing 24 25</p>
<p>02:03:50 1 me or understanding me, I would just ask that you 2 let me know that so that I have time to rephrase and 3 ask you a question that you do understand. 4 Is that okay? 02:04:01 5 A Of course. 6 Q Would you please state your name one more 7 time for us? 8 A Certainly. And it's okay. I understand. 9 Talk slow, and we'll make sure that your voice isn't 02:04:14 10 wiped out. My name is Matthew Kimmins, and that's 11 M-a-t-t-h-e-w K-i-m-m-i-n-s. 12 Q Mr. Kimmins, have you had your deposition 13 or otherwise sworn testimony taken before? 14 A I have. 02:04:31 15 Q Are you comfortable enough with the 16 deposition process that I can do away with the 17 normal admonitions of a deposition? 18 A Yes. Actually, I am. For the -- for the 19 sake of expediency, yes. 02:04:44 20 Q I'm going to show on my screen a notice of 21 deposition that is titled "Notice of Deposition of 22 Plaintiff's Expert Matthew Kimmis" [sic]. And I 23 apologize. It should say Kimmins. 24 A It's all right. 02:05:13 25 Q Are you seeing that notice on your screen</p>	<p>02:05:15 1 now? 2 A I certainly am. 3 Q Have you seen this document before? 4 A I have. 02:05:28 5 MS. MARGOLIES: I want to mark this notice 6 next in line. And I apologize. I don't know what 7 exhibit we are on, but at the next break, I can make 8 a note and try to identify what exhibit we are on. 9 (Exhibit 55 was marked for identification.) 02:05:45 10 BY MS. MARGOLIES: 11 Q You'll notice at the bottom of page 2 it 12 says "attachment A, document request." 13 Do you see that? 14 A Yes, I do see that. 02:05:58 15 Q And if I scroll down, there was a number of 16 requests for production of materials 1 through 8, 17 and I don't believe that we were provided any 18 materials. So I just want to ask you right now if 19 you have any materials for us today in response to 20 this request for production of documents. 21 A The only documents that I were provided 22 were the documents that actually came from Dale 23 Galipo's office. So I would ask that any -- 24 anything that I provide Dale Galipo, I want them to 25 share with you, but I would prefer that Dale</p>

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<p>03:06:46 1 R6"; true?</p> <p>2 A Yup. True.</p> <p>3 Q It's approximately a 50-minute video</p> <p>4 compilation of the incident itself with some</p> <p>5 timestamp descriptions at the bottom; true?</p> <p>6 A Yes.</p> <p>7 Q The second video is what I believe you were</p> <p>8 just referring to, which is titled "Post Fall Bullet</p> <p>9 Count Video R1."</p> <p>03:07:16 10 A That is correct.</p> <p>11 Q And in that second video, that does not</p> <p>12 have at the bottom timestamp descriptions like the</p> <p>13 first video does; right?</p> <p>14 A No. It does not.</p> <p>15 Q The second video that you were just</p> <p>16 describing has at the top right numeric counter.</p> <p>17 A Correct.</p> <p>18 Q Okay. And so when I'm reading from your</p> <p>19 report on page 6 that it was important to note that</p> <p>20 all timestamp descriptions are what is visually and</p> <p>21 audibly present in the video --</p> <p>22 A Correct.</p> <p>23 Q -- I'm just trying to understand that what</p> <p>24 you are saying is in your first video, the 50-minute</p> <p>03:08:09 25 video with the bottom descriptions, that those</p>	<p>03:08:13 1 descriptions come from what you are observing and</p> <p>2 hearing in the video?</p> <p>3 A Yes. That is correct and --</p> <p>4 Q And then --</p> <p>5 A Purely from observation. Yes.</p> <p>6 Q And then just talking about that first</p> <p>7 video, would it be fair to say that on those</p> <p>8 timestamp descriptions at the bottom of that video,</p> <p>9 that you are describing what the average juror or</p> <p>10 judge would see and hear when watching the video?</p> <p>11 A Yeah. I would -- yeah. The compilation</p> <p>12 video. Yeah. That's correct.</p> <p>13 Q On that compilation video, do you believe</p> <p>14 that you can see things in that video that the</p> <p>15 average juror or judge could not see?</p> <p>16 A That's asking me to be able to look into</p> <p>17 the minds of other people. I couldn't say with any</p> <p>18 clarity. I mean, it depends on how carefully they</p> <p>19 go into this video. I assume it's going to be --</p> <p>20 it's going to be examined as carefully as I was</p> <p>21 examining it. So every time you look at a video,</p> <p>22 every time, no matter how many times you look at a</p> <p>23 video, you're going to see something slightly new,</p> <p>24 something different, small details.</p> <p>25 So I couldn't say what people -- other</p>
<p>45</p> <p>03:09:47 1 people would or would not see or whether -- do I</p> <p>2 believe that I'm going to be a little more intensive</p> <p>3 in my examination? Yes, I do. Do I believe that</p> <p>4 there's a lot of haze, smoke, fog, blurriness and</p> <p>5 other things that could create a sense of confusion?</p> <p>6 Yeah, I do. Do I think your question is do I think</p> <p>7 I'm noticing some things that the average person</p> <p>8 would not? Yes. I do believe so.</p> <p>9 Q So to clarify, you believe that you can see</p> <p>10 things in this video that the average juror and</p> <p>11 judge would not be able to see with their own eyes?</p> <p>12 A Again, that's -- the average. That's a</p> <p>13 very difficult -- I cannot say what other people can</p> <p>14 or cannot see. I will say that when you ask someone</p> <p>15 who has a better understanding to examine something</p> <p>16 that other people when they lack that understanding,</p> <p>17 that understanding's going to give someone a little</p> <p>18 more of an insight. So I -- yeah. I think that I'm</p> <p>19 more detailed and more careful with what I'm -- what</p> <p>20 I'm looking for or what I'm looking into.</p> <p>21 I cannot say whether that could be more or</p> <p>22 less than what an average person would, but I do</p> <p>23 believe that the amount of technical training that</p> <p>24 I've had, the time that I've been working within</p> <p>25 digital video, yeah, can offer me a little more</p>	<p>03:11:25 1 understanding and detail and clarity.</p> <p>2 Q You're not testifying as to the facts of</p> <p>3 this case; right?</p> <p>4 A Not at all.</p> <p>5 Q You are not making any factual</p> <p>6 determinations as to what took place?</p> <p>7 A Not at all. That is not what I was hired</p> <p>8 to do.</p> <p>9 Q How did you decide when you were going to</p> <p>10 start syncing your videos? Does that make sense?</p> <p>11 A How did I decide? When you have anyone</p> <p>12 seeing that has a variety of different types of</p> <p>13 cameras, it's really, really important to start to</p> <p>14 put those together to be able to better understand</p> <p>15 what you're looking at.</p> <p>16 Different cameras are going to -- each</p> <p>17 camera was going to have a wide variety of different</p> <p>18 bits of information that other perspectives may</p> <p>19 lack. Might have a different point of view. Might</p> <p>20 be able to see something clearer. There could be a</p> <p>21 smudge in the lens of one camera. There could be a</p> <p>22 lens flare or something -- a light that fuzzes out</p> <p>23 the video of another camera. Some areas, some</p> <p>24 cameras may have greater clarity. One camera might</p> <p>25 have rotten visuals but very clear audio. So all of</p>

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<p>04:31:30 1 watching the videos. Yes.</p> <p>2 Q The next description is at --</p> <p>3 A You can see the point when he drops.</p> <p>4 Q The next description is at 42 minutes and</p> <p>04:31:41 5 50 seconds.</p> <p>6 A Yup.</p> <p>7 Q The description reads "3:50 screams are</p> <p>8 heard. Three people have been shot."</p> <p>9 Is that true?</p> <p>04:32:02 10 A That is what that says.</p> <p>11 Q That is what that says? And that's just</p> <p>12 based on your observation of the videos?</p> <p>13 A I'm not sure -- that's based on the</p> <p>14 observation of the videos. I'm pretty sure -- hold</p> <p>04:32:16 15 on for a second. It's based on the CAD report.</p> <p>16 That description is based on the CAD report.</p> <p>17 Q And then the final one is at 43 minutes and</p> <p>18 41 seconds.</p> <p>19 A Yes.</p> <p>04:32:48 20 Q The timestamp description that you have at</p> <p>21 the bottom says "3:51 son, mom and dad have been</p> <p>22 shot," quote, "blood everywhere," end quote.</p> <p>23 A Yes. Yes.</p> <p>24 Q Could you tell us where that --</p> <p>04:33:03 25 A Say again.</p>	<p>04:33:07 1 Q Could you tell us where that description</p> <p>2 comes from?</p> <p>3 A CAD report.</p> <p>4 Q And you put the words "blood everywhere" in</p> <p>5 quotes. Why did you do that?</p> <p>6 A I believe that's what was in the CAD</p> <p>7 report, I think. Hold on. Yeah. It's from the CAD</p> <p>8 report. It's 3:50 -- 3:51:22, "mom and dad blood</p> <p>9 everywhere" from the CAD report.</p> <p>04:34:20 10 Q And that's just based on what you read from</p> <p>11 the CAD report; right?</p> <p>12 A That is based on what the CAD report</p> <p>13 states.</p> <p>14 Q Okay. I want to turn now to your second</p> <p>15 video. Mr. Kimmens, would you agree that there is</p> <p>16 some limitations to video evidence?</p> <p>17 A 100 percent.</p> <p>18 Q And you were not asked to reach any</p> <p>19 opinions in this matter as to the appropriateness of</p> <p>20 the individual defendants' use of force?</p> <p>21 A No. No. I was not asked -- I was not</p> <p>22 presented this as something that was in any way</p> <p>23 either portraying the police or Mr. Puga in a</p> <p>24 derogatory lens.</p> <p>04:35:02 20 Q According to your report -- I'm going to</p>
<p>89</p> <p>04:35:25 1 pull that up again, and I'm on page 6 of your report.</p> <p>2 A I assume you're referring to the shot count</p> <p>3 paragraph.</p> <p>04:35:51 5 Q I am. The first sentence -- so on page 6,</p> <p>6 last paragraph there's a header that reads "shot</p> <p>7 count."</p> <p>8 A Uh-huh.</p> <p>9 Q And the first sentence under "shot count"</p> <p>10 states "Based on the files we have reviewed, we</p> <p>11 cannot with any amount of clear specificity</p> <p>12 determine how many shots were fired in total because</p> <p>13 the audio is so overlapping with loud punctuated WAV</p> <p>14 forms of audio."</p> <p>04:36:04 15 A Correct.</p> <p>16 Q Did I read that correct?</p> <p>17 A That is correct.</p> <p>18 Q And if I'm understanding your report, then,</p> <p>19 you state that each audio WAV form that indicates a</p> <p>20 shot could be representative of either the gunshot</p> <p>21 itself or an echo of the gunshot; is that right?</p> <p>22 A That is correct. However, may I share</p> <p>23 my -- my screen with you and share something?</p> <p>24 Q I'm happy to have you share something.</p> <p>04:36:27 25 Just give me one second. I just want to make sure</p>	<p>90</p> <p>04:37:18 1 that I'm reading your report correctly.</p> <p>2 A Okay.</p> <p>3 Q I'm on your report, page 6, the final</p> <p>4 paragraph, shot count. I just read the first</p> <p>04:37:31 5 sentence. And then the second sentence says "Prior</p> <p>6 to Mr. Puga falling to the ground, each one of these</p> <p>7 audio WAV forms that indicate a shot could be</p> <p>8 representative of either the gunshot itself, or an</p> <p>9 echo of the gunshot or the WAV form is shown to be a</p> <p>10 solid block of audio with no clear peaks to use to</p> <p>11 identify a gunshot."</p> <p>12 Did I read that correctly?</p> <p>13 A That is correct, but I would like -- I</p> <p>14 would like to kind of amend that, and here's why.</p> <p>15 May I share my screen?</p> <p>16 Q Sure.</p> <p>17 A Okay. Sometimes when you view audio, you</p> <p>18 use audio as kind of like a single WAV form; right?</p> <p>19 And you can see the peaks and valleys, and it</p> <p>20 represents the way that sound basically created</p> <p>21 vibrations within the ear. That's what an audio WAV</p> <p>22 form is. Now, when the police use their audio,</p> <p>23 oftentimes their audio is split. It is split</p> <p>24 between the exterior of what is going on outside of</p> <p>25 the vehicle and then there's an interior channel</p>

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<p>04:39:01 1 that goes on inside the vehicle.</p> <p>2 These two audio forms are put together, but</p> <p>3 there's a difference within them, and this is what</p> <p>4 I'd like to show you. If I open up that audio WAV</p> <p>04:39:14 5 form, here it is; right? Now, if you look at the</p> <p>6 left and right channel and I were to zoom in, you'll</p> <p>7 notice on the right channel there's just this</p> <p>8 static.</p> <p>9 And if I were to isolate the left audio</p> <p>04:39:31 10 channel, you hear something very, very distinct.</p> <p>11 You can hear -- it sounds like -- it sounds kind</p> <p>12 of -- you know, it sounds just -- it's almost</p> <p>13 impossible really to make out.</p> <p>14 However, when you isolate the right audio</p> <p>04:39:48 15 channel, something different comes up. You'll</p> <p>16 notice that the WAV forms up top are kind of a blur;</p> <p>17 right? You can't find anything distinctive. Well,</p> <p>18 the WAV forms on the bottom are much more</p> <p>19 distinctive, and you can actually split like this</p> <p>04:40:06 20 these different pops-off.</p> <p>21 Now, this is the exact same audio file.</p> <p>22 The prob -- the difference is that the right channel</p> <p>23 is different than the left channel. So when I said</p> <p>24 that initially, we were looking at these channels</p> <p>04:40:23 25 cooperatively and together. I wasn't quite</p>	<p>04:40:26 1 isolating them.</p> <p>2 When you isolate the right audio channel,</p> <p>3 you can actually hear something a little bit</p> <p>4 different. You can actually hear a lot of more</p> <p>04:40:38 5 distinctive sounds coming out of it. Here, I'll</p> <p>6 play this first one. Now I'm going to play the</p> <p>7 exact same point in the exact same place from the</p> <p>8 right audio channel.</p> <p>9 Did you hear the difference? It is a very,</p> <p>04:40:56 10 very, very different audio form. Here we go. This</p> <p>11 is the right one. Boom, boom, boom, boom,</p> <p>12 boom. I can count that. Top audio form, can't copy</p> <p>13 that. So I can't -- I can't distinctly understand.</p> <p>14 So since I wrote that report, okay, as I've</p> <p>04:41:22 15 gone into the audio files, I have discovered that</p> <p>16 there is a clear separation between the left and the</p> <p>17 right audio channel. The right audio channel gives</p> <p>18 a lot more clarity as to how many shots were being</p> <p>19 fired. So, again, here's an example playing the</p> <p>04:41:39 20 left audio form.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>04:41:54 25</p> <p>Q Mr. Kimmens, I'm going to just stop you right here with the presentation. Thank you for that. What I need to know is: Is your report accurate?</p> <p>A Yes. I would -- I -- the one thing that I</p>
<p>93</p> <p>04:41:58 1 did conclude as far as the audio -- trying to</p> <p>2 examine the audio files is that you really do need a</p> <p>3 forensic audio expert, and I stand by that. I</p> <p>4 really do. This needs further scrutiny, and it is a</p> <p>04:42:15 5 level of scrutiny that I do not believe I have the</p> <p>6 technology or the professional experience to really</p> <p>7 go into further detail on. So this is requiring a</p> <p>8 little bit more attention to examine the audio form.</p> <p>9</p> <p>Q Thank you for that.</p> <p>04:42:33 10 In your report you wrote in the middle</p> <p>11 there of that same paragraph, "the audio from these</p> <p>12 sources could not be clear enough for us to</p> <p>13 distinctly count shots fired with accuracy."</p> <p>14 A That is true. Although the right and left</p> <p>04:42:49 15 audio channels do give me greater understanding and</p> <p>16 do provide more definition, it is still very</p> <p>17 difficult for us to understand how many shots are</p> <p>18 fired at the end of it. I cannot with any amount of</p> <p>19 specificity state the number of shots that were</p> <p>04:43:06 20 fired.</p> <p>21 Q Do you have any training and experience on</p> <p>22 firearms?</p> <p>23 A Training, yes.</p> <p>24 Q What training do you have in using</p> <p>04:43:17 25 firearms?</p>	<p>94</p> <p>04:43:20 1 A Well, I grew up using firearms. I grew up</p> <p>2 around firearms. I was -- received my first</p> <p>3 firearms training and certification when I was 13</p> <p>4 years old. I was recertified when I was 16 years</p> <p>04:43:34 5 old. I'm actually going in for a recertification</p> <p>6 again on firearm safety. I own a couple of</p> <p>7 firearms. I have been familiar with gun ranges. So</p> <p>8 I've had some experience. Nowhere near to the level</p> <p>9 of technical expertise and training that a police</p> <p>officer has but some.</p> <p>04:43:54 10 Q From your training and experience, are you</p> <p>11 able to differentiate the sounds of different</p> <p>12 firearms?</p> <p>13 A Yes, but not in this recording.</p> <p>04:44:14 14 Q For example, in this recording you cannot</p> <p>15 distinguish between the sound of an AR-15 and a</p> <p>16 Glock 9-millimeter?</p> <p>17 A That is correct. No, I could not.</p> <p>04:44:27 18 Q From the audio that you have here, are you</p> <p>19 able to distinguish between the sound of the law</p> <p>20 enforcement pistol and the non-law enforcement</p> <p>21 pistol?</p> <p>22 A No. I could not tell the difference</p> <p>23 between them. No.</p> <p>24 Q Do you have training and experience, then,</p>

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24 (Pages 93 to 96)

<p>04:44:40 1 in being able to distinguish the sound from a lethal 2 versus a less lethal shotgun? 3 A No, because the shotguns are the -- kind of 4 the same. It's just there's nonlethal rounds which 5 are basically like bean bags that are propelled out 6 in a shotgun shell. But no. I cannot differentiate 7 between lethal and nonlethal. I can differentiate 8 between the pepper ball sounds and the firearms. 9 That was clear to be able to differentiate.</p> <p>04:45:11 10 Q But in regards to a 40-millimeter less 11 lethal shotgun verse a lethal shotgun, you could not 12 differentiate between those sounds? 13 A No. No. Not by audio. Not by WAV files.</p> <p>04:45:26 15 Q In your experience having operated guns, 16 you're aware that guns can misfire? 17 A Certainly.</p> <p>04:45:41 20 Q And what I mean by "misfire," I am not a 21 gun person. So what I mean by misfire is that you 22 can pull the trigger, you can hear a bang but a 23 bullet actually does not eject. 24 A Well, a misfire is more like a jam than if you hear -- if you hear a bang, a bullet has come out of the barrel. If the cartridge may not have ejected from the chamber. But if you hear a bang, then it's been fired.</p>	<p>04:46:09 1 Q Thank you for clarifying. So you could 2 hear a bang, but a bullet might not actually come 3 out of the gun into the air? 4 A I do not know of any instance where a 5 firearm would make a bang and not discharge a 6 bullet.</p> <p>04:46:24 5 Q Have you ever heard of a squib round? 6 A A squib?</p> <p>04:46:32 10 Q Yes. 11 A Yes. I have. That's a nonlethal round.</p> <p>04:46:52 15 Q No. When I'm referring to a squib round, 16 I'm referring to when the bullet -- the trigger is 17 pulled, bullet comes out but does not actually eject 18 out of the gun. It's stuck in the gun in that squib 19 round. 20 A The bullet or the casing? Because there's two different components. If there's a fire, that means the primer has ignited, and that means that the gun powder inside the shell is ignited. That means that the lead round has been ejected as a result of that compression, but the casing -- is that what you're referring to? Because that's not the bullet. That's just the casing round.</p> <p>04:47:19 25 Q Yes.</p>
<p>97</p> <p>04:47:20 1 A Okay.</p> <p>04:47:39 5 Q Okay. So I just want to make sure. Is it 6 your testimony that you can hear a bang from a gun 7 and that a bullet will have ejected out of that gun? 8 A You're using the term "ejected." 9 There's -- the bullet could be fired from the 10 barrel, but the casing, you know -- the shell is 11 ejected. So there are many instances where a round 12 is fired and comes out of the barrel but the casing 13 is not ejected. There's -- oftentimes there's jams 14 and things like that that happen. Yes.</p> <p>04:47:54 10 Q Okay. Fair enough. But you are not an 11 expert in ballistics; correct? 12 A No. Not at all. Nope. Not at all.</p> <p>04:48:09 15 Q In your video that you have, you title the 16 video "post-fall bullet count video." 17 A Yes.</p> <p>04:48:24 20 Q But you don't know how many bullets were 21 actually fired; true? 22 A Not with any amount of absolute 23 specificity. What we did notice was when I was 24 isolating the left and right audio channels, what 25 became clear was that the right audio channel</p>	<p>98</p> <p>04:48:48 1 contained a lot more definition and being able to 2 hear the shots, and it made -- it made that counting 3 a little bit easier but by no means 100 percent. I 4 cannot say unless, you know -- this needs to go in 5 front of an audio expert really.</p> <p>04:49:05 5 Q And if I'm understanding your words 6 correctly, are you equating the gunshot sounds to be 7 the same as bullet count? 8 A Shots fired is what I would -- it's not 9 bullet count. It's just shots fired is the way that 10 I would title it based on, you know, the -- but 11 initially it is hard to separate is this a shot? Is 12 it -- they're firing so quick, it really is 13 difficult. I think that I can actually -- I can 14 accurately narrow down the shots. I can't say 15 100 percent. I believe I can bring it -- you know, 16 I believe I can count it, but I cannot say with 17 100 percent that is absolutely certain. So I can 18 give a best educated guess, which is my best count, 19 and it's based on what I can see in the audio files.</p> <p>04:49:21 10 Q And you cannot say who fired -- 11 A Not at all.</p> <p>04:49:45 15 Q -- the gunshots? 16 A Not in the least.</p> <p>04:50:05 20 Q You couldn't say whether it was CHP, the 21 police, or the fire department? 22 A I don't know.</p> <p>04:50:20 25 Q You couldn't say whether it was CHP, the 23 police, or the fire department? 24 A I don't know.</p>

<p>04:50:22 1 deputies or Mr. Puga?</p> <p>2 A Not at all. Well, I can say that it was</p> <p>3 not Mr. Puga based on what I can see. I mean, when</p> <p>4 he ran out in front of his vehicle, there was</p> <p>04:50:39 5 nothing -- he was not carrying any gun that I could</p> <p>6 see, that I could see; that the video shows me that</p> <p>7 I could see. I -- you know, I can only go by the</p> <p>8 evidence that I am made available. So I cannot go</p> <p>9 past that. I didn't see him turn. I didn't see any</p> <p>04:51:02 10 muzzle flash come from his direction. I didn't see</p> <p>11 him turn around when he started running. He just --</p> <p>12 he just hightailed it.</p> <p>13 Q You cannot say who fired the gunshots --</p> <p>14 A I cannot say who fired the gunshots at all.</p> <p>04:51:20 15 No. I cannot.</p> <p>16 Q You cannot say which of any of the gunshots</p> <p>17 that we hear resulted in bullets striking Mr. Puga?</p> <p>18 A Cannot.</p> <p>19 MS. MARGOLIES: I don't have any other</p> <p>04:51:39 20 questions. I don't know if now would be a good time</p> <p>21 to break or if co-defense counsel would like to --</p> <p>22 THE WITNESS: Well, if I may, I am actually</p> <p>23 on the East Coast time zone right now, and it's</p> <p>24 rounding up to 8:00 o'clock at night. How long do</p> <p>04:51:58 25 you think this deposition's going to continue?</p>	<p>04:52:03 1 MS. ESQUIVEL: I'm sorry. I probably have</p> <p>2 about maybe 10, 15 minutes worth of questions. It</p> <p>3 just all depends on your responses.</p> <p>4 THE WITNESS: No problem. I will try and</p> <p>5 grind this out. No problem. I want to be as</p> <p>6 accommodating as I can.</p> <p>7 MS. ESQUIVEL: Do we want to take a quick</p> <p>8 five-minute break before I ask my questions, or</p> <p>9 should we just proceed?</p> <p>10 THE WITNESS: No. I would love it if we</p> <p>11 could just keep moving through if you don't mind.</p> <p>12 Would that be possible? Would you guys be opposed</p> <p>13 to that.</p> <p>14 MS. ESQUIVEL: No. I just don't know if</p> <p>15 the court reporter needs a quick break because she's</p> <p>16 doing a lot of work.</p> <p>17 THE WITNESS: She is doing a lot of work.</p> <p>18 Rachael, do you need a break?</p> <p>19 THE REPORTER: I'm okay. Thanks.</p> <p>20 EXAMINATION</p> <p>21 BY MS. ESQUIVEL:</p> <p>22 Q Okay. So, Mr. Kimmins, your report does</p> <p>23 not say. What exactly were you asked to do by the</p> <p>24 retaining the legal office? What were you tasked to</p> <p>25 do?</p>
<p>101</p> <p>04:53:04 1 A Specifically try -- take a series of videos</p> <p>2 and try and come up with sort of a compilation</p> <p>3 within a certain period of time. That was Request</p> <p>4 1. Request 2 was see if I couldn't determine the</p> <p>5 amount of shots that were fired following Mr. Puga</p> <p>6 collapsing to the ground.</p> <p>7 Q Okay. So I guess I just -- can you kind of</p> <p>8 clarify? When you say that you were asked to</p> <p>9 compile the videos within a specific amount of time,</p> <p>10 was it just to take the different videos like you</p> <p>11 did and the video called "Puga compilation" and just</p> <p>12 show the same point in time from the different</p> <p>13 angles caught by the various videos?</p> <p>14 A That is exactly correct. Yes.</p> <p>15 Q Okay. Did the Galipo office ask you to do</p> <p>16 anything else, other than that?</p> <p>17 A No. I was not -- we did not enhance them,</p> <p>18 blow them up, change them, alter them, filter them.</p> <p>19 No.</p> <p>20 Q Okay. That was going to be my next</p> <p>21 question was when you were viewing these videos, did</p> <p>22 you -- I noticed that in your report, you said that</p> <p>23 all the videos were put together in 1920 by 1080</p> <p>24 pixels, otherwise being full HD, and that's on</p> <p>25 page 6 under the exporting process paragraph.</p>	<p>102</p> <p>04:54:33 1 A That is -- it is -- that is the resolution</p> <p>2 that the compilation of video was exported out as.</p> <p>3 Yes.</p> <p>4 Q Okay. Did -- were all the videos that you</p> <p>5 received from plaintiffs' counsel, were they all</p> <p>6 1920 by 1080 videos?</p> <p>7 A No. They were not. There was a wide</p> <p>8 variety of different types of formats. They were</p> <p>9 vertical cell phones of different cell phone makes</p> <p>10 and models. You know, every camera has a different</p> <p>11 diameter lens. They shoot at different rates. It</p> <p>12 depends, but 1920 by 1080 was kind of the most kind</p> <p>13 of standardized way to export this video as.</p> <p>14 Q Do you recall if there were any videos that</p> <p>15 were greater than 1920 by 1080 resolution?</p> <p>16 A I'm sure there were.</p> <p>17 Q Were there -- no. I'm asking you do you</p> <p>18 know which ones were greater? I'm sorry. Which</p> <p>19 ones were greater than 1920 by 1080?</p> <p>20 A I could not -- I could not offhand -- I</p> <p>21 could not say offhand. I can look at the videos</p> <p>22 that we have used, and I could quickly see the</p> <p>23 parameters on them. So I can see that the cell</p> <p>24 phone videos, albeit vertical format, were still at</p> <p>25 1920 by 1080 in their native formats. So --</p>

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<p>04:56:20 1 Q What about the video that you were -- I'm 2 sorry. I'm just going to scroll up to page 4 of 3 your report. Plaintiff -- that's Bates stamp 4 plaintiff 0241. Do you recall what that native 5 resolution was?</p> <p>6 A That native resolution -- that's sitting at 7 1920 by 1080 as well. We were provided that video.</p> <p>8 Q Okay.</p> <p>9 A And I'm pretty certain -- yeah.</p> <p>10 Q And you understand that the video 11 Bates-stamped at 241, that that was -- it was an 12 extremely zoomed-in video such that much of the 13 details got blurred because of the amount of zoom 14 used?</p> <p>15 A Yeah. I mean, it was blown up and -- yeah. 16 It's just -- it's just really zoomed. Yeah. It's 17 not enhanced. It's just, you know --</p> <p>18 Q Did you use any program to -- when you 19 viewed the video in its native format to try to 20 clear it up a bit?</p> <p>21 A Extrapolate detail, no. I didn't use any 22 program, any AI, anything that changes the details 23 that were contained within the video.</p> <p>24 Q Did you -- in terms of the -- you have two 25 videos, one from the patrol vehicle on the driver</p>	<p>04:58:16 1 side of Mr. Puga's car and then the other one from 2 the patrol vehicle on the passenger side. Do you 3 recall whether those videos from those patrol 4 vehicles, whether they were 1090 by 1080 -- I'm 5 sorry, 1920 by 1080?</p> <p>6 A I've got COSB ending in 1465. The 7 resolution to that initial video I see sitting at 8 480 by 480.</p> <p>9 Q And on 9200, COB 009200?</p> <p>10 A Hold on for a second, please. I do not 11 know what that native resolution is offhand. That's 12 a DVD video format. It's slightly different. So 13 it's -- let me see here. Hold on for a second. 14 Yeah. I don't know offhand. I apologize. I don't 15 know what resolution that is offhand.</p> <p>16 Q In terms of 1465 where you said it was less 17 than the 1920 by 1080 high definition that you used 18 to create the video entitled "Puga Compilation," are 19 you aware that when you increased the resolution of 20 a video that's less than the resolution to which 21 it's transferred, that some -- it creates 22 distortion?</p> <p>23 A There is a change in some things when you 24 change the video format, especially going from 25 smaller video to a larger video. Yes. There is --</p>
<p style="text-align: center;">105</p> <p>05:00:41 1 there are certain small changes that do occur. Yes. 2 But the -- since we were syncing up the videos, we 3 weren't looking for anything we couldn't see. We 4 were only looking for the things we could see. So 5 examination of all videos within their native format 6 is always step one. So --</p> <p>7 Q You would agree with me that in order -- it 8 would be better when you're trying to look at detail 9 to look at the original video and obviously observe 10 as much detail as possible because it's not 11 distorted when you convert it to a higher 12 resolution; correct?</p> <p>13 A Yes. But as video files and formats are 14 changing and as the nature of televisions are 15 changing, so is the software that actually enlarges 16 video. So -- or actually blows it up. So what's 17 happening right now is that because there is a huge 18 push now for a high resolution television, 4K and 19 things like that, a lot of the video software that 20 actually scales video up is significantly improving. 21 So I don't disagree with you.</p> <p>22 Yes. There are alterations that occur when 23 you change a native video file size and format. 24 Yes, there is. No doubt. But there are many 25 different video software systems that are actually</p>	<p>05:02:13 1 allowing for the increase in resolution that is 2 actually pulling out further detail. So there is 3 some video systems that are starting to change that 4 dynamic, but that does not apply in this case in 5 this video.</p> <p>6 Q Okay. Perfect. I just wanted to make sure 7 that you didn't do anything to enhance any of the 8 video quality; correct?</p> <p>9 A No. I did not. Not at all.</p> <p>10 Q Okay. So my other questions go back to -- 11 and I know we've already gone through this quite a 12 bit, but I still -- I'm confused because if your -- 13 if you were hired and tasked by the Galipo office to 14 compile the video that's Puga compilation that shows 15 a certain portion of the incident, I'm trying to 16 understand what exactly is the purpose of the 17 comments that we've already gone through in terms 18 of where you put the line -- the little banner in terms 19 of the time, if that's not something that the Galipo 20 office asked you to do.</p> <p>21 A That is something that we discussed with 22 them about a small time bar that could basically, 23 you know, indicate moments in time starting from 24 point A and ending in point B. They didn't 25 specifically ask for it. We discussed it when we</p>

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<p>05:03:51 1 were discussing the nature of this project with 2 them, and when we did our initial, we kind of showed 3 them the way it was going to look and whether or not 4 that might interest them. And they kind of nodded, 5 and we sort of moved forward with that. 6 So it is the kind of thing that we could 7 easily remove, so if they wanted the same video with 8 that red bar removed. But we create our materials 9 so that we can edit or change them quickly, you 10 know, based on what our clients need. So I -- I'm 11 now clearly aware of your concerns with that 12 timeline. The little titles down below were really 13 just to indicate the things we were -- or I was 14 observing. It wasn't meant to create a bias or a 15 biased response and wasn't my intention at all -- 16 Q You know, that's part of my question is, I 17 guess, I'm just trying to understand what the 18 purpose is, if it's your interpretation of what is 19 being seen on the video at that point in time. So 20 if it's your interpretation of what you're seeing 21 and what's happening at that point in time, I don't 22 see how that fits into the -- your task of simply 23 putting together the videos of the same point in 24 time just from different angles. 25 So that's why I kept asking why did you</p>	<p>05:05:35 1 decide to add that -- those comments about what is 2 being depicted at -- in the videos at that specific 3 time when that's not something you were tasked with? 4 A I'm tasked with trying to make the video as 5 clear and understandable as possible. Any titles or 6 anything I use is only in furtherance to try to 7 create a sense of clarity. It wasn't for any other 8 reason outside of that. It's just -- 9 Q Okay. 10 A -- this is what's happening. This is what 11 I see. Here's the time frame when these things 12 begin. This is how we think. Now, this is -- there 13 are gaps. There are gaps in the CAD report. There's 14 gaps in the videos. There's gaps all over the 15 place. It was kind of a complicated task, but our 16 end goal is only not to interpret what we see. Our 17 job is to just show what we're able to see, and I 18 wasn't drawing or trying to draw any type of 19 conclusion, just note what we were observing. 20 Q Okay. So -- and, again, I'm not accusing 21 you of any malfeasance here. I'm just wondering how 22 you made the decision as to what you were going to 23 write down at any specific given time. So just by 24 way of example, when Ms. Margolies had asked you to 25 listen for about a minute at 37 and 40 seconds into</p>
<p>109</p> <p>05:07:15 1 the video using the marker up on the upper 2 right-hand corner, when she asked you count how many 3 times the officer ordered Mr. Puga to back up, and 4 just using that as an example, is that something 5 that you chose not to comment on by putting a little 6 banner at the bottom but yet you chose to comment 7 that he complied with commands to put his hands up? 8 So I'm just wondering how did you make a 9 decision to comment on certain conduct that is being 10 depicted in the video but not on others? 11 A Well, there wasn't any -- there wasn't any 12 attempt of bias. There really wasn't. We were 13 being focused -- we were being tasked to focus on 14 Puga. We were being tasked to focus on what he was 15 doing, what he was -- what was going on from his 16 perspective. That was -- Mr. Puga was my focus. 17 What Mr. Puga was doing was my focus. How Puga was 18 reacting was my focus. 19 My focus was not, Hey, can you please tell 20 me how many times officers did this? Could you 21 please tell me where the officers moved to and did 22 that? Could you please tell me where, you know -- 23 my focus was I was not being asked to focus on what 24 the officers were doing. I was being asked to focus 25 on what Mr. Puga was doing, and I wasn't -- I was</p>	<p>05:08:49 1 only trying to respond with what I was able to 2 observe Mr. Puga doing, and that's, you know -- 3 that's the only answer I have to that question. 4 Q Okay. So in terms of what he was doing, 5 would that also include what he was not doing, such 6 as when they told him to go down to a knee and he 7 slightly bent forward and you can see like he was 8 getting ready to kneel but instead walked to the 9 front of the vehicle? So, again, there was no 10 commentary as to that. So again, I'm just trying to 11 figure out how you made the decision. I'm trying to 12 understand the thought process as to why comment on 13 certain things and not others. 14 A I can't comment on anything that wasn't 15 happening. So that's -- I don't -- I'm sort of 16 confused by that. If I were to comment on things 17 that were not happening, it would be an endless 18 commentary that wouldn't cease. I was only asked to 19 focus on Mr. Puga, focus on what he was doing, how 20 he was responding, what was going on. So -- 21 Q But you didn't comment on the fact that he 22 was going down to one knee. So why wasn't that in 23 there? That's something he was doing. 24 A Yes. 25 Q So why was that not a banner on the video?</p>

<p>05:10:08 1 A I also didn't make a lot of notes that he 2 was constantly reaching for his face and his eyes in 3 an agitated state. I didn't note the fact that he 4 was having a hard time, you know -- I said he was 5 disoriented, but I didn't, you know, go into 6 breaking the details of every time I detailed that. 7 I don't necessarily have the best answer 8 for your question. You're trying -- it wasn't out 9 of bias. It was because my client asked me to focus 10 on certain aspects of this video and certain 11 timestamps in this video, and that's what I was 12 trying to do to fulfill that request. 13 Q Did Ms. -- did anybody from Galipo's office 14 ask you to put those banners that do appear on the 15 video? Did they specifically ask you to use -- to 16 use that language in those banners? 17 A No. Not at all. This is something that I 18 did more out of, you know -- more innocently than 19 anything, and it's something that can be changed in 20 a heartbeat. This file was set up so that it could 21 be altered. Video files, once they're rendered, you 22 can't change them. So it's really important that we 23 keep native files available so you could make 24 whatever changes, you know, that we need to. It was 25 not in any attempt to infer bias, guilt, innocence,</p>	<p>05:11:44 1 anything, just what I was going to see. 2 Q No. I understand that. And, again, that's 3 why I was asking you what exactly your assignment 4 was. The two videos that you primarily rely on, 5 which are the two patrol vehicle -- from the dash 6 cam we call it MVARS, were you aware that those are 7 from the CHP patrol vehicles? 8 A The -- those files being from the -- 9 Q Correct. The two that you see from either 10 side from behind Mr. Puga's vehicle. 11 A Yeah. I was aware -- I was aware that was 12 a -- yeah. 13 Q Okay. Are you aware that the CAD log that 14 was provided to you -- and this is at -- just so we 15 know we're talking about the same thing, Bates stamp 16 730 -- or I'm sorry. Bates stamp -- that includes 17 870 -- I'm sorry. Let me just bring it up here 18 because I'm looking at the large file and not the 19 smaller one. 865 to 878, obviously COSB. 20 Q Are you aware that that's the CAD log for 21 the San Bernardino County Sheriff's Department? 22 A No. I was not aware what department had 23 released this CAD log. No, I was not. 24 Q Would you -- are you aware that CHP has its 25 own CAD log?</p>
<p>113</p> <p>05:13:22 1 A I would assume that they did, but I was not 2 made available. 3 Q Wouldn't you want to align up the CAD log 4 from CHP since the video is from CHP? 5 A I would want to be as accurate as I 6 possibly can with any information that I'm given. 7 That's my goal. And if I'm given more information 8 that gives me a chance to be more accurate, I would 9 absolutely seize on that. 10 Q I was unclear on your testimony earlier 11 when you said that you did not see Mr. Puga shoot a 12 gun. You didn't see any muzzle flash? 13 A I didn't. 14 Q Did you see based on your -- which I'm 15 assuming you did more than multiple times review of 16 the videos. Did you ever see a gun on Mr. Puga? 17 A I don't -- no, we did not see any gun. No. 18 Q So I -- I'm going to share with you in a 19 minute. Let me just get there. 20 A Please. 21 Q On your Puga compilation video at 14 -- at 22 42 minutes -- or 42:29:14. 23 A 42:29:14. Okay. 42 -- okay. 24 Q I'm sorry. I'm trying to get there. 25 A No problem.</p>	<p>114</p> <p>05:15:45 1 Q Okay. So I'm just going to share it so we 2 can all look at the same thing. 3 A Thank you. 4 Q Can you see the video? 5 A Yes. 6 Q Okay. So I'm at 42:29:09, and this is 7 where Mr. Puga is running away. I am going to play 8 this so you can see what I'm doing on the slowest 9 possible that my program will allow me to -- 10 A Perfect. Okay. 11 Q I'm sorry. That was super fast even though 12 I tried to but -- on three occasions as he's 13 running -- and I'll stop it next time -- there's 14 something that appears to be shining in Mr. Puga's 15 hand, and I'll rewind it. It keeps coming in and 16 out as he's running. Did you make any efforts to 17 ascertain what that shining thing is? And I'll run 18 it again as I ask my question again. We're looking 19 at the top video on the right-hand side. 20 MS. MASONGSONG: I'm going to object for 21 the record as calls for speculation and lacks 22 foundation. 23 You may answer. 24 THE WITNESS: I do not see anything that -- 25 ///</p>